

# Exhibit B

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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KEVIN T. LAVERY, M.D.,

Plaintiff,

Case Number:

vs.

2:22-cv-10613-BAF-KGA

PURSUANT HEALTH, INC.,

Defendant.

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THE VIDEOTAPED DEPOSITION OF KEVIN LAVERY, M.D.

The videotaped deposition of Kevin Lavery, M.D. taken at 740 West Michigan Avenue, Jackson, Michigan, on Tuesday, January 31, 2023, commencing at about 9:05 in the morning, pursuant to notice.

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1 Q And just so our record is clear, you don't know  
2 whether today you formally serve as the Chief  
3 Medical Officer of Pursuant Health, is that  
4 correct?

5 A Correct.

6 Q But if you are presently serving as the Chief  
7 Medical Officer at Pursuant Health, you haven't  
8 performed any duties in that role in at least the  
9 past two years, is that correct?

10 A No.

11 Q What duties have you performed as the Chief  
12 Medical Officer of Pursuant Health in the last  
13 two years?

14 A So up until I was asked not to communicate with  
15 them, on a fairly regular basis Leslie and I  
16 would be having conversations regarding the  
17 development of the implementation of putting a  
18 retinal camera into the kiosk.

19 So she would send me photos to show  
20 me the photos that had been done. I was  
21 participating in videoconferences to see the  
22 ergonomics of the machine and get my feedback on  
23 that. Review the photos, could I see the photos,  
24 and what we needed, were they good quality.

25 Q And since the time of those phone calls and

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1 videoconferences that you described, are there  
2 any other duties that you've performed as the  
3 Chief Medical Officer at Pursuant Health?

4 A Can you be more specific?

5 Q Can you name anything else that you've done --

6 A Yes.

7 Q -- in a role as Chief Medical Officer for  
8 Pursuant Health since the date of the  
9 videoconferencing and phone calls that you  
10 described where you collaborated with Leslie  
11 Sommers looking at photos and talking about  
12 potentially integrating a retinal camera?

13 A So since communication has been stopped, I've not  
14 had any role as the Chief Medical Officer.

15 Q And before the communication stopped, can you  
16 describe any other duties and responsibilities  
17 that you fulfilled in a role as Chief Medical  
18 Officer for Pursuant Health other than what  
19 you've already testified about?

20 A Going back over what timeframe?

21 Q At any timeframe during which you had the role of  
22 Chief Medical Officer.

23 A So I'm trying to think where to start. I mean --  
24 so from being on the web page as, you know, the  
25 doctor validating the process, you know, during

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1 fundraising, giving -- helping them with the NIH  
2 grant that brought in the 1.2 million that  
3 brought validation for blood pressures and  
4 weights and helping them through that study.

5 Answering the questions and validations,  
6 you know. Early on there was a printout making  
7 sure that it was compliant with what we printed  
8 out on the form for patients when they failed the  
9 vision test or passed the vision test. So I had  
10 to validate that information.

11 Talking about what data we should get  
12 and how we should use it potentially. There was  
13 a lot of just, sort of, on the fly we need an  
14 answer to this, you know, how should we proceed  
15 with that.

16 So it was a very sort of just  
17 interactive, you know, start-up mentality in the  
18 early days of we're just trying to get stuff  
19 done, let's call Kevin and get his opinion.

20 MR. BUSH: If you would mark this as  
21 Exhibit 3.

22 (Exhibit 3 is marked.)

23 BY MR. BUSH:

24 Q And we've handed you a document, Dr. Lavery, we  
25 marked as Exhibit 3. Are you able to identify

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1 things.

2 And so one of the big ones with  
3 diabetics was glucose testing. So maybe we would  
4 do some glucose testing on the side of the  
5 machine.

6 We talked about the need to get  
7 demographics from the patient so we could track  
8 them. Getting their age, their contact  
9 information, their weights and other factors.

10 So it was open broadly enough -- it  
11 wasn't in the patent, but in one of the early  
12 discussions was hearing, we would be very  
13 amenable to doing hearing testing.

14 So we could add on a lot of  
15 functionality to that original platform.

16 Q And all that you described, this is part of your  
17 original idea that was essentially the patent  
18 application, correct?

19 MR. INOENCIO: I didn't catch the  
20 question. That was what?

21 MR. BUSH: That was part of the original  
22 patent application. The idea that was a part of  
23 the original patent application.

24 MR. INOENCIO: Thank you.

25 THE WITNESS: Can you ask that question

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1                   one more time?

2 BY MR. BUSH:

3 Q           I just want to understand everything that you've  
4                   told me about the sorts of information that could  
5                   be captured. Vision loss, the blood pressure  
6                   cuff.

7 A           I didn't mention vision loss.

8 Q           That's what you said when you were describing the  
9                   vision screening that could take place for the  
10                  patient utilizing the medical kiosk. And you  
11                  described a blood pressure cuff, glucose testing,  
12                  potentially capturing different demographics, the  
13                  weight of the patient, potentially hearing  
14                  testing.

15                   And my question is, all of those  
16                  different potential functionalities of the  
17                  medical kiosk, that was captured in the idea that  
18                  was the subject of the patent application,  
19                  correct?

20 A           Well, the hearing was not mentioned in the  
21 patent. I did mention in the patent spirometry  
22                  for emphysemic patients.

23                   And in the patent itself, we didn't  
24 mention all of the -- some of those things like  
25 the macular degeneration and some of those things

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1                   And so as I'm looking at those screened  
2                   images, and I own that, I'm going to read those  
3                   images. I may be able to get -- and we talked  
4                   about the HEDIS scores, get insurance to pay for  
5                   the readings of those pictures. So there's a lot  
6                   of ways to leverage insurance buy-ins to this.

7                   But now that I have that picture and  
8                   I've read it, I can do several things with it. I  
9                   can look at a reasonably healthy eye exam and say  
10                  they don't really need to see my well-trained  
11                  specialist. I'm going to send this out to one of  
12                  my referring optometrists.

13                  So the referring optometrist now is  
14                  thrilled because they just got a patient for  
15                  years to come that they can sell glasses to or  
16                  whatever.

17                  And if the patient has pathology, I can  
18                  send that patient a note. So the diabetic who  
19                  just hasn't been able to get into the eye exam,  
20                  if they get a note from a doctor saying, you  
21                  know, you've got some bleeding in your eyes, we  
22                  really think you should come in, chances are  
23                  they're going to take that bus and get in or get  
24                  a ride or do the things that are really hard for  
25                  them to actually come in for their eye exam.

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1                   And so we could screen for the  
2                   cataracts, you know, the macular degeneration  
3                   treatments and the diabetics and the glaucoma.  
4                   Those are the ones that require a lot of testing,  
5                   a lot of physician treatment. So that was a  
6                   business model.

7                   I also thought with insurance, though --  
8                   so insurance companies pay a lot of money to  
9                   primary care eye doctors to get their diabetic  
10                  eye exams done. And it's sort of a bone of  
11                  contention.

12                  But if they get a high HEDIS score, sort  
13                  of an assessment for HMOs and such, there's like  
14                  81 pieces now, I don't know what it was back in  
15                  those days. But the more of those pieces they  
16                  can fill out, the higher their payment is,  
17                  their -- they get a bump at the end of the year.  
18                  I can't remember the name of the word for that.  
19                  A bonus.

20                  And so it was difficult for them to get  
21                  diabetic patients, which was a simple exam, into  
22                  a medical doctor to get that testing done. But  
23                  it was needed.

24                  And so if we could provide this out in  
25                  a remote location, and it's now approved, you

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1 know, telecommunication has taken off of late.

2 But if we could do those in remote  
3 locations, an insurance company would not have  
4 the cost of sending the patient to a primary care  
5 doctor or to an ophthalmologist's office, which  
6 can be expensive.

7 The primary care doctor would check off  
8 a box on their HEDIS score, so they would love  
9 it. And I envisioned that the insurance  
10 companies would pay us for reading the fees or a  
11 reduced fee exam. So they're winning, they're  
12 not paying for a full eye exam but they're  
13 getting the information they need to save a  
14 patient's vision. And I think that would work.

15 I think some of the doctors would pay  
16 for referrals. So you -- these are very valuable  
17 patients. A different market, but I remember  
18 once somebody said a Lasik patient -- people were  
19 willing to pay \$175 to get a Lasik patient. The  
20 laser, you know. So there's a monetary value to  
21 getting that referral.

22 Collecting that money and setting up the  
23 structure is a different issue. Which  
24 unfortunately SoloHealth ran into.

25 We could lease out those units. And

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1 again, there could be a professional fee for  
2 reading the pictures.

3 You know, if we created a reading center  
4 where all of the pictures -- instead of going to  
5 one doctor's office or the doctor that owned it,  
6 if we wanted to own all of the units, we could  
7 create a reading center or hire people to be the  
8 ones who read those pictures and gave a report as  
9 to how to handle that picture, to sort of score  
10 the picture. And that may be something that was  
11 billable as well. So --

12 Q And all of these dimensions for this idea of a  
13 business model about which you've given  
14 testimony, these were all ideas that you had at  
15 the time of the patent --

16 A Correct.

17 Q -- when the patent was issued? And these ideas  
18 that you had for these different ways of  
19 capturing the business model that you've  
20 described, these were all part of the ideas that  
21 were embodied in the application that became the  
22 patent that we've marked as Exhibit 3?

23 A So this is -- these are the things that were  
24 going to bring, in my mind, the patent to life.

25 Q But they were related to and part of the things

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1 International has different -- three -- four  
2 different functions, and one is to train the  
3 local doctors how to do better surgery, but  
4 another big component is the biomedical, having  
5 somebody there to fix their equipment.

6 They get donated a lot of equipment and  
7 they don't know how to fix it. So a brand new  
8 laser missing a fuse, it doesn't get worked on.

9 A gentleman there who was from Australia  
10 who's a software engineer and a biomedical  
11 engineer, Sanjeev Hiremath, and we were  
12 discussing what we could do with this technology.

13 He was very interested on an  
14 international basis to make this work. But he  
15 and I together then came up with a working model,  
16 a video model, so that -- I wanted to be able to  
17 show somebody that, no, we really could make  
18 this work. And that came later in the process.

19 And I -- we had -- I don't even know if  
20 streaming was out yet.

21 But he was able to show us remotely from  
22 his home in Australia -- I was on the call, Bart  
23 was on the call -- that we could actually have  
24 infrared sensors to make this technology work.  
25 This wasn't just a pie in the sky, you know,

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1 can't make it happen. It's like, no, we really  
2 can. And he did a working model of it.

3 So Bart's testimony was incorrect in  
4 that he said he thought I was just sitting on my  
5 patent for eight years. So my patent was issued  
6 in 2003. You know, we were meeting in the spring  
7 of 2007. And so a little less than four years.

8 And it wasn't that it was dormant, it  
9 wasn't that it was sitting on a shelf empty. I  
10 was trying to do what I could with a busy  
11 practice and still make this come to life.

12 Q Were you successful in monetizing the patent in  
13 any specific way --

14 A No.

15 Q -- before you came to collaborate with Bart  
16 Foster?

17 A No.

18 Q You've read Mr. Foster's deposition testimony?

19 A I have.

20 Q So the closest you came to monetizing your patent  
21 was a potential opportunity with a camera company  
22 that had some discussions but didn't ultimately  
23 reach a closed transaction, right?

24 A Correct.

25 Q And the relationship that you described with the

1 Q Can you tell me your memory as to how this Letter  
2 of Intent came about in 2007?

3 A Yes.

4 Q How did it come about?

5 A Bart had contacted me and reached out to me by  
6 phone, told me what he was doing. He was trying  
7 to start a company. He saw my patent. Really  
8 loved what my patent would do. And we started  
9 having discussions.

10 And so he wanted to come up and meet  
11 with me. It was a -- unlike today, a wonderful  
12 day in Michigan where we could sit outside. We  
13 sat by the tennis courts at the country club of  
14 Jackson.

15 We absolutely hit it off. Bart, as you  
16 know, is very charismatic, very energized, very  
17 bright, very engaging.

18 And because of that meeting and through  
19 discussions, I was able to show Bart that he was  
20 looking at the universe too small by just doing  
21 vision screening alone with the hope of maybe  
22 selling contact lenses and having obstruction in  
23 the industry fighting him at every step of the  
24 way.

25 And I shared with him my vision of being

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1 disruptive in the field of eye care and

2 ophthalmology, and Bart got really excited.

3 So when we first had the conversations,  
4 Bart never stated this, but wanted to get access  
5 to my patent. After reading his deposition, I  
6 know why. Because he needed it to get the other  
7 patent released by CIBA and to get a spin off.

8 But at the time, he bought into my plan  
9 to change how eye care is delivered. And through  
10 lots of discussions about how we could change  
11 the world, he decided not to just have me as a  
12 royalty owner that he just wrote a check to on a  
13 quarterly basis, but he said let's start a  
14 business together.

15 You know, I'll own 90 percent, you'll  
16 own 10 percent, and we're going to found a  
17 business. And the operating agreement states  
18 that. I mean, we were the founders of  
19 SoloHealth.

20 And I never touted that. I never,  
21 like, celebrated that. Bart was always the  
22 perfect front person. And I was kind of the  
23 quiet guy in the background.

24 But I sold Bart on what we could do in  
25 the universe of health care and where we could go

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1 after real payers, the insurance companies and  
2 the ophthalmologists with deep pockets and the  
3 consumer, and showed him all of the revenue  
4 streams that were not available to just hoping  
5 that Walmart was going to pay you for -- Walmart  
6 doesn't want to pay anybody for anything.

7 So through a process of those  
8 discussions, Bart wanted me at the table with my  
9 ideas. And as he said at his deposition, Kevin  
10 had tons of ideas. And we worked together.

11 And so we -- I founded SoloHealth. I'm  
12 one of the founders in my mind. And I think the  
13 documents support that.

14 And so Bart saw that I had contacts in  
15 the industry, that I had been talking to lens  
16 manufacturers, that I knew optometry well. I had  
17 been speaking at big optometric national  
18 meetings. I had a big optometric referral  
19 network.

20 I knew ophthalmology. They didn't know  
21 ophthalmology. They didn't have any doctor on  
22 their staff. They weren't thinking about the  
23 medical aspects of what we could do.

24 And so between all of the different  
25 things that -- you know, the businesses I've run,

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1 the contacts, the knowledge in medicine, he  
2 wanted me at the table. He wanted access to  
3 those ideas.

4 And that's why we talked as much as we  
5 did even after the closing and starting the  
6 business. He ran most ideas by me before  
7 implementing them.

8 So you know, Bart saw in me an idea guy  
9 that he didn't have to areas of medicine that he  
10 didn't even know about. I had to explain  
11 diabetic retinopathy to him.

12 And so, you know, through those  
13 interactions over the course of a relatively  
14 short period was 'I want you as an owner and I  
15 want you at the table.'

16 Q And this first phone call that you described that  
17 you received from Bart Foster, do you remember  
18 when that phone call took place?

19 A I do not.

20 Q Sometime in 2007 before the date of the document  
21 we've marked as Exhibit 8?

22 A Correct.

23 Q Do you believe it was a couple of weeks before or  
24 a couple of months before? What's your best  
25 memory about the timing of that phone call from

1 A I was there as an individual. So everybody else  
2 would have been related to SoloHealth or counsel  
3 for SoloHealth.

4 Q Was your counsel present?

5 A He was not.

6 Q And you were in person present for the closing of  
7 the contribution agreement?

8 A Correct.

9 Q And that closing took place where?

10 A I believe at the offices of DLA Piper in Atlanta.

11 Q Now, at the closing, did you provide anything  
12 other than the patent to SoloHealth?

13 A I'm not sure what you're asking.

14 Q Did you provide any intellectual property to  
15 SoloHealth at the closing other than the  
16 assignment of your patent?

17 A I thought the contribution agreement was I was  
18 also giving them my intellectual property.

19 Q What intellectual property did you provide to  
20 SoloHealth at the closing other than your patent?

21 A I did not provide them any documents or  
22 material -- materials at the time of closing.

23 Q Did you provide other intellectual property to  
24 SoloHealth after the closing?

25 A Absolutely.

1 Q Focusing on the closing, at the time of the  
2 closing, did you have a demonstration video at  
3 that point in time of the concept that was  
4 captured in your patent?

5 A I don't recall the dates as to where and when  
6 that video was shown. It probably was -- I don't  
7 know. I don't know. I don't remember when that  
8 video was shown.

9 Q And the video that you're describing right now,  
10 that's the video that you testified about earlier  
11 that was prepared by Mr. Hiremath out of  
12 Australia?

13 A Hiremath, yes.

14 Q Hiremath. There's not a different demonstration  
15 video other than the one prepared by Mr. Hiremath  
16 about which you testified earlier this morning,  
17 correct?

18 A Correct. And again, we don't know if it's a  
19 video or just a camera footage stream.

20 Q And whether it's a video or a footage stream,  
21 that's not something that you presented to  
22 SoloHealth at the closing of the contribution  
23 agreement, correct?

24 A Correct.

25 Q Was there a business model for your idea of a

1                   medical screening kiosk that you provided to  
2                   SoloHealth at the closing of the contribution  
3                   agreement?

4   A   I don't believe there was one at closing, no.

5   Q   Did you come to work on a business model for  
6                   SoloHealth after the date of the closing of the  
7                   contribution agreement?

8   A   It was certainly a big part of our focus. We  
9                   just started a new business, hopefully we've got  
10                   a business model. And it was changing.

11                   But there was a document that I saw  
12                   relatively quickly after the closing. We were  
13                   discussing strategy and business models, and I  
14                   was referenced in that discussion.

15                   So presumably I was at that meeting  
16                   and part of the discussions on the business  
17                   model.

18   Q   But you didn't present a business model to  
19                   SoloHealth at the closing of the contribution  
20                   agreement that we marked as exhibit -- Exhibit 9,  
21                   correct?

22                   MR. INOSENCO: Asked and answered.

23                   You may answer.

24                   THE WITNESS: I don't believe so.

25                   BY MR. BUSH:

1 BY MR. BUSH:

2 Q Do you recognize the document we've marked as  
3 Exhibit 10, Dr. Lavery?

4 A I do.

5 Q And what is the document we've marked as  
6 Exhibit 10?

7 A It's a consulting agreement made between myself  
8 and SoloHealth.

9 Q And you executed the consulting agreement we  
10 marked as Exhibit 10 at the closing of the  
11 contribution agreement that we marked as  
12 Exhibit 9, correct?

13 A Correct.

14 Q What kinds of services did you provide to  
15 SoloHealth in your performing the consulting  
16 agreement we've marked as Exhibit 10?

17 A So it's hard for me to differentiate, largely  
18 because to the best of my recollection I never  
19 submitted a bill and was never paid as a  
20 consultant.

21 So I looked at this as I'm the founder  
22 of a company, I'm the start-up, I want it to  
23 succeed, I'm going to do whatever I can to make  
24 them successful.

25 And so all of the calls and meetings and

1 discussions and looking for partners was all done  
2 to help the company not -- presumably under the  
3 consulting agreement, but I was never paid.

4 If I was paid, I may have been paid once  
5 but I don't recall that. But I was never paid  
6 more than once, that I know of.

7 Q And during the time in which you were providing  
8 services under the consulting agreement, did you  
9 come to work on a business model with SoloHealth?

10 A A start-up is a very fluid thing. And so you're  
11 always trying and failing and trying and failing.

12 Unfortunately SoloHealth has not  
13 succeeded as much as I would have liked it to.  
14 But that's always on your brain as a start-up  
15 company. What are we going to do to drive  
16 revenue? So that's never off your brain.

17 Q Did you provide a business model to SoloHealth in  
18 connection with providing consulting services or  
19 did you instead collaborate with SoloHealth  
20 around different iterations or ideas for a  
21 business model?

22 A So before we signed the contribution agreement, I  
23 had laid out lots of different potential business  
24 models for them to pursue and revenue sources.

25 Once we started rolling out the vision